IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.13845 of 2004

Between:

H.P. Narasimha Murthy Achar, S/o. Late H.P. Krishna Murthy Achar,

Hindu,R/o. Hattibelegal Village, Alur Revenue Mandal,

Kurnool District.

..... PETITIONER

AND

1 Sri Raghavendra Swamy Mutt, rep by its Manager,
Manthralayam, Kurnool District.
2 Mallikarjuna Reddy, S/o. Linga Reddy,

aged about 42 years, R/o. Alur Village & Mandal,

Kurnool District.
3 Principal Secretary (Endowments) Secretariat Buildings,

Hyderabad.

(R.3 is not a necessary party)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus or any other appropriate writ, order or direction and declare the action of the 1st respondent Manager, Sri Raghavendra Swamy Mutt, Manthralayam, in canceling the lease unilaterally without any notice in respect of Ac. 40.11 cents in S.No.614 of Hattibelegal Village, Alur Revenue Mandal, Kurnool District as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.A.V.SIVAIAH

Counsel for the Respondent No.1: MR V.VENUGOPAL RAO
Counsel for the Respondent No.2: P.RAJASEKHAR
Counsel for the Respondent No.3: GP FOR ENDOWMENTS

The Court made the following:

-

-

-

-

-

-

-

-

-

-

ORDER:

The petitioner claims to be the cultivating tenant in respect of Ac.40-11 cents of land, situated in Survey No.614, Hattibelegal Village, Alur Mandal, belonging to Sri Raghavendra Swamy Mutt, Manthralayam. The petitioner states that the lease was granted in the name of his father in the year 1956, and after his death in the year 1986, he has been in continuous possession and enjoyment of the same by paying the lease amount regularly without any default.

2. The case of the petitioner is that during the lifetime of his father, there was a partition among the family members and an extent of Ac.2-40 cents fell to his share. He claims that the 1st respondent has recognized him as a statutory tenant and filed O.S.No.122 of 1989 on the file of the Court of the District Munsif, Aluru, for recovery of Rs.400/- towards arrears of the lease amount for the year 1984-85. The said suit was dismissed on 30.03.1990. Thereafter, when the Manager of the 1st respondent Mutt demanded the lease amount at the rate of Rs.4,000/- per year and threatened to cancel the lease, the petitioner filed A.T.C. No.1 of 1996 in the Tenancy Court i.e. Junior Civil Judge's Court, Alur, under Section 6 of the A.P.

Tenancy (Andhra Area) Act, 1956, for fixation of fair rent. Though the said suit was dismissed for default on 15.02.2000, the petitioner filed an application for restoration and the same is still pending. The petitioner has been depositing the agreed lease amount of Rs.1,000/- to the credit of A.T.C. No.1 of 1996, and thus there are no arrears of lease amount. He states that he also filed A.T.C. No.1 of 2001 in the Court of the Junior Civil Judge, Alur seeking injunction restraining the 1st defendant Mutt from interfering with his possession. While so, the Manager of the 1st respondent Mutt communicated an auction notice dated 06.07.2004 to the petitioner informing that auction will be conducted on 07.07.2004 for the leasehold rights of the land in question. However, on 07.07.2004 the auction was not conducted and the proposed participants were informed that the same is postponed. As a matter of fact, the petitioner got issued a telegram on 06.07.2004 through his Counsel requesting the 1st respondent not to conduct the auction since A.T.C. No.1 of 1996 and A.T.C. No.1 of 2001 are pending adjudication. While so, on 25.07.2004 the petitioner was called by the Sub-Inspector of Police, Aluru and he was informed that one P.Mallikarjuna Reddy lodged a complaint alleging that the petitioner trespassed into the lands in question. The petitioner came to know that the said Mallikarjuna Reddy (2nd respondent) was declared as a successful bidder in respect of the leasehold rights for the lands in question in the auction held on 07.07.2004 and thus he is claiming possession of the said lands.

3. The grievance of the petitioner is that no such auction took place on 07.07.2004 and that the 1st respondent in connivance with the 2nd respondent has created the alleged agreement of lease so as to deprive his legitimate rights in respect of the lands in question. The petitioner also contends that unless the possession of the lands in question is recovered from him following due process of law, the 1st respondent cannot put the leasehold rights to auction. He also contends that he is a landless poor person as per the explanation to Section 82 of A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 since he is in occupation of a small extent of dry land of Ac.2-40 cents, which was further partitioned on 28.10.1995 among the petitioner and his seven major sons. Thus, the petitioner seeks a Writ of Mandamus, seeking a declaration that the action of the 1st respondent / Sri Raghavendra Swamy Mutt, Manthralayam, in cancelling the lease

unilaterally without any notice in respect of Ac.40-11 cents of land in Survey No.614 of Hattibelegal Village of Alur Mandal, is arbitrary and illegal.

4. On behalf of the 1st respondent, the Manager of Sri Raghavendra Swamy Mutt, Manthralayam filed a counter- affidavit stating that the father of the petitioner cultivated the lands in question till 1995-96. However, he fell in arrears and failed to pay about Rs.12,000/- in spite of repeated notices. After the death of the petitioner's father, the petitioner high-handedly entered into the lands without any authority, making false claims. In terms of the provisions of A.P. Charitable and Hindu Religious Institutions & Endowments Act and the Rules made thereunder, the 1st respondent conducted public auction in respect of the leasehold rights for the year 2004-05, after giving wide publicity. The auction was initially scheduled on 07.07.2004, but the same was postponed to 15.07.2004, and the same was informed to all the persons present on 07.07.2004. The date of auction was also published in the village by beat of tom-tom and the auction was conducted on 15.07.2004. The 2nd respondent was declared as the highest bidder and he paid the entire lease amount of Rs.6,900/-, and consequently, a lease deed was executed in his favour. He was also put in possession of the lands in question. The claim of the petitioner that he is a landless poor person has been denied, and it is stated that the land in question, being a leased land, is neither alienable nor divisible as claimed by the petitioner. The alleged partition of the land belonging to the 1st respondent Mutt between the petitioner and his major sons is not binding on the 1st respondent and cannot be recognized under the law. It is also pleaded that the alleged payments of lease amount in ATC being self-serving action of the petitioner is nothing but creating evidence to substantiate his claim for the leasehold rights in respect of the land in question.

5. A separate counter affidavit has been filed by the 2nd respondent on the same lines stating that he is a successful bidder in the auction conducted on 15.07.2004 and he was put in possession of the land in question and therefore, the petitioner cannot claim any rights or possession of the same.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material on record.

7. It is not in dispute that the total extent of land is Ac.40-11 cents. Though the petitioner claims that during the lifetime of his father, there was a partition in which an extent of Ac.2-40 cents fell to his share and again there was a partition among the petitioner and his major sons, there is absolutely no material to substantiate the same and at any rate in view of the specific plea of the 1st respondent that the petitioner has never been recognized as a statutory tenant, the said contention cannot be accepted.

8. The learned Counsel for the petitioner placed much reliance upon the fact that the petitioner was also made a party to O.S.122 of 1999 on the file of the Court of the District Munsif, and contended that the said fact makes it clear that the 1st respondent recognized the petitioner as a statutory tenant. A perusal of the Judgment in O.S.No.122 of 1999 dated 30.03.1990 shows that the suit was filed against the father of the petitioner for recovery of the rents due for the year1984-85. During the pendency of the suit, the father of the petitioner died and consequently the petitioner along with his mother and another brother was brought on record as legal representatives. Ultimately, the said suit was dismissed as settled out of Court. Thus, there was no adjudication of the rival claims of the parties nor there was any finding as to the claim of the petitioner as a lessee. Moreover, the petitioner herein was only added as a party to the said suit, being the legal representative of the deceased sole defendant. Hence the mere fact that the petitioner was a party to the said suit does not confer any right of tenancy on the petitioner.

9. Thus, even assuming that after the death of his father, the petitioner continued to be continuing in possession, he was never treated as a statutory tenant, and therefore it is always open to the 1st respondent to take appropriate steps for putting the leasehold rights of the lands to auction following due process of law.

10. It is relevant to note that the specific case of the 1st respondent is that the auction was postponed to 15.07.2004, which fact was intimated to the petitioner, as well as

other participants, and was also published in the village by beat of tom-tom. The 2nd respondent was the successful bidder. The petitioner having failed to participate in the auction cannot claim that the action of the 1st respondent in putting the 2nd respondent in possession of the land in question is arbitrary and illegal. The further contention raised by the petitioner that he is a landless poor person and therefore, entitled to the benefit of Section 82 (2) of A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 is also without any substance. As expressed above, the petitioner never acquired any right of tenancy and was not recognized by the 1st respondent as a statutory tenant.

11. For the aforesaid reasons, the Writ Petition is misconceived and devoid of any merit. Accordingly, the same is dismissed.

Needless to mention that the interim order of *Status Quo* granted pending the writ petition shall stand vacated. No costs.

Dsr

ASSISTANT REGISTRAR

To;

1. The Manager,
Sri Raghavendra Swamy Mutt
Manthralayam, Kurnool District

2. The Principal Secretary,
Endowments, Secretariat Buildings,
Hyderabad

3. Two CCs to the Government Pleader

for Endowments, High Court Buildings,

Hyderabad (OUT)

4. Two CD copies.